

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CENTRO PRESENTE, a membership organization,
et al.,

Plaintiffs,

No. 1:18-cv-10340-DJC

V.

DONALD J. TRUMP, President of the United States, in his official capacity, *et al.*,

Defendants.

JOINT STATUS REPORT

Pursuant to the Court’s November 4, 2019 Electronic Endorsement, *see* ECF No. 105, Plaintiffs Centro Presente, *et al.* (“Plaintiffs”) and Defendants Donald J. Trump, *et al.* (“Defendants”) respectfully submit this Joint Status Report. Reference is made throughout to the parties’ previous Joint Status Reports filed on September 20, 2019, ECF No. 101 (the “September Status Report”) and October 31, 2019, ECF No. 104 (the “October Status Report”).

1. **Bilateral Agreement with El Salvador and Continuation of Documentation for Beneficiaries of TPS Designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan**

As described in the October Status Report, on Monday, October 28, 2019, the Department of Homeland Security (“DHS”) announced that the United States reached a bilateral agreement with El Salvador to extend TPS protections for Salvadoran nationals through at least January 4, 2021. Press Release, DHS, U.S. and El Salvador Sign Arrangements on Security & Information Sharing; Give Salvadorans with TPS More Time (Oct. 28, 2019), <https://www.dhs.gov/news/2019/10/28/us-and-el-salvador-sign-arrangements-security-information-sharing-give-salvadorans>. Following that agreement, on November 4, 2019, DHS

published a Federal Register Notice stating that it is automatically extending through January 4, 2021 the validity of certain TPS-related documentation for TPS holders from all terminated countries subject to litigation, including El Salvador, Haiti, and Honduras, among others. *See* Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan, 84 Fed. Reg. 59,403 (Nov. 4, 2019). The Federal Register Notice also stated that Salvadoran TPS-holders would retain their TPS, subject to programmatic requirements, for at least 365 days after the issuance of any mandate to the district court reversing the preliminary injunction, if applicable, in the *Ramos* litigation discussed below. In addition, the Federal Register Notice provided that Haitian TPS holders would retain their TPS, subject to programmatic requirements, for at least 120 days following the issuance of the later of the two mandates anticipated in the *Ramos* action and in the *Saget* action discussed below, provided that both preliminary injunctions are reversed. The Honduras TPS holders would retain their TPS, subject to programmatic requirements, for at least 120 days after the issuance of any mandate to the district court reversing the preliminary injunction in *Ramos*, if applicable.¹

2. *Ramos v. Nielsen*, No. 3:18-cv-1554-EMC (N.D. Cal.), appeal filed, No. 18-16981 (9th Cir.)

As the parties described in the September Status Report and the October Status Report, a three-judge panel of the Ninth Circuit heard oral arguments in the *Ramos* appeal on August 14, 2019. Following the argument, the Court issued an order directing the parties to submit supplemental briefs concerning the District Court's determination of proceeding beyond the

¹ Although the Federal Register Notice provides for the extension of the eligibility of TPS-related documents until January 4, 2021, DHS reserved the right to revise the timetable with a new Federal Register Notice should current preliminary injunctions be reversed based on the timetable discussed in the text above.

administrative record and the scope of the administrative record. Order, *Ramos v. Nielsen*, No. 18-16981 (9th Cir. Aug. 21, 2019), ECF No. 71. The parties completed this supplemental briefing on October 4, 2019, and the appeal remains pending.

Pursuant to this Court's Order granting the Joint Motion, ECF No. 81, the deadline for Plaintiffs to take depositions is stayed pending the disposition of the *Ramos* appeal by a three-judge panel of the Ninth Circuit. The parties will also submit a status report within fourteen days of a decision by the three-judge panel of the Ninth Circuit.

3. Proceedings in this Action Following Disposition of the *Ramos* Appeal

Upon entry of a decision by a three-judge panel of the Ninth Circuit, either affirming or reversing the District Court's injunction, Plaintiffs intend to proceed with all discovery in this action, including deposition testimony. Defendants contend that the nature of any future proceedings will depend on whether the appeal is affirmed or reversed.

If the *Ramos* injunction is affirmed, Defendants will seek to extend the current stay of deposition testimony. As noted *supra*, Plaintiffs will seek to proceed with discovery. Regardless, the parties agree that, if a three-judge panel affirms the preliminary injunction, they should meet-and-confer following that affirmance to discuss next steps and then file a status report within fourteen days of the decision.

If the *Ramos* preliminary injunction is vacated, either in whole or in part, the parties agree that this action should proceed to a disposition on the merits in consideration of the TPS termination dates.² At this time, however, the parties disagree on the scope of any such further proceedings. The parties appear to have reached an impasse as to the principal disputed

² Defendants reserve the right to revisit whether a stay is appropriate in the future to the extent there is consideration of *en banc* review by the Ninth Circuit or a party petitions the Supreme Court for certiorari.

discovery matters outlined in the September Status Report and October Status Report. Subject to the resolution of those discovery matters, the parties propose submitting a status report to identify their respective positions with respect to the procedure by which the Plaintiffs' claims will be resolved on the merits.

4. *Saget v. Trump*, No. 1:18-cv-1599-WFK-ST (E.D.N.Y.), appeal filed, No. 19-1685 (2d Cir.)

On April 11, 2019, the United States District Court for the Eastern District of New York issued a decision that preliminarily enjoined and restrained the Government from terminating TPS for Haiti pending the resolution of the action. *Saget v. Trump*, 375 F. Supp. 3d 280 (E.D.N.Y. 2019). On June 6, 2019, the Government appealed the injunction to the United States Court of Appeals for the Second Circuit. The Government filed its opening brief on September 19, 2019. Plaintiff-Appellees' brief is due on December 19, 2019, and briefing is currently scheduled to be completed in January 2020.

5. Written Discovery in this Action Since the October Status Report

In the September Status Report, the parties explained that Defendants had notified Plaintiffs on September 18, 2019 that an additional revised privilege log would be forthcoming reflecting the withdrawal of Defendants' claims of privilege over approximately 500 documents, along with a revised description for a small set of entries. As described in the October Status Report, Defendants produced this revised privilege log on September 23, 2019, and sent a further revised privilege log on October 17, 2019. Defendants sent another revised privilege log on November 20, 2019, together with a production of nine additional documents. The parties have exchanged additional letters regarding Defendants' privilege assertions and are in the process of scheduling a meet and confer, as discussed below.

6. Unresolved Discovery Issues³

In the September Status Report and October Status Report the parties set out their respective positions with respect to three principal discovery issues: (i) Discovery from White House Custodians; (ii) Privilege Assertions; and (iii) Depositions. The parties are at an impasse with respect to Discovery from White House Custodians at this time, subject to the Court's May 15, 2019 order addressing Plaintiffs' motion to compel. *See* ECF No. 89. The parties have exchanged several letters with respect to Privilege Assertions and Depositions and are in the process of scheduling a further telephonic meet and confer. Based on the discussions and correspondence to date, it appears likely that motion practice will be necessary following the meet and confer.

7. Other.

The parties do not request a live conference before the Court at this time, but the parties would be glad to appear to discuss the discovery disputes or any other matters if the Court so wishes.

³ Plaintiffs reserve the right to advance all of their discovery requests. To the extent the Court permits further discovery, Defendants contend that discovery should be limited to the issues discussed in this section.

Respectfully submitted,

CENTRO PRESENTE, *et al.*

By their attorneys,

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Dated: December 4, 2019

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: December 4, 2019

/s/ Kevin P. O'Keefe